



INSIDE THIS ISSUE:

Mediation—A Confidential Process	1
EEOC Ruling	2
Mediator Spotlight	
10 Reasons We get Stuck In Conflict	3
Ask the Mediator	
ADR on TV	4
ADR Events Where you Are	
Upcoming Trainings	5
Word Find	6
ADR Contact Information	7
Word Find Answers	



Mediation— “A Confidential Process”

By Karen Civitate

How many of us share with the parties during the introduction of the mediations we conduct that, “mediation is a confidential process?” How many of us go on to say that, “what you say in this room stays in this room?”

Over the past year or so the question of confidentiality keeps rising to the top of the list as a part of the mediation process that has been unclear. As a result, I started to really look at what might be contributing to this confusion, mine as well as others.

I began by asking other mediators what they shared with individuals during the introduction and found that many of us were saying exactly what I presented in the first paragraph of this article; that, “mediation is a confidential process” and that, “what is said in the room, stays in the room.”

The next thing I looked at was the, “Agreement to Mediate and Confidentiality Agreement” forms we have individuals sign at the beginning of the process. I also took a look at the law surrounding confidentiality in the Administrative Dispute Resolution (ADRA) Act of 1996.

In the Agreement to Mediate and Confidentiality Agreement it states, “This is an agreement

by the parties identified below to participate in mediation and adhere to the confidentiality provisions applicable to the mediation process as described in the ADRA of 1996, 5 U.S.C. §574. It goes on to state, “The parties understand that any oral statement, or any written communication prepared specifically for the mediation, which is provided only to the mediator(s) in confidence, will be kept confidential by the mediator(s) with the exception of information concerning fraud, waste, abuse, criminal activity, sexual harassment, or threats of imminent harm. The parties also understand that oral and written communications shared with all parties ARE NOT protected and may be disclosed and matters that are admissible in a court of law or other administrative process continue to be admissible even though brought up in the mediation process.”

Given this clarification, is mediation a confidential process? Answer, “It depends.” Given the above information, it would appear that it is only confidential from the perspective of the mediator(s). The parties are not agreeing to keep any of their discussions confidential when they sign the Agreement to Mediate and Confidentiality Agreement, only the

mediators are (unless one of the exceptions applies). And if you read the ADRA, the only time the parties would be committing to keeping all of their discussions confidential is if they were to annotate on the agreement at the beginning of the session their commitment to greater confidentiality than permitted under ADRA.

In conclusion, what I learned is that as a mediator, I need to be sure to clarify at the beginning of the session that mediation is a confidential process, **ONLY** from the perspective of myself and my co-mediator. If the parties wish for their communications to stay in the room, the mediator needs to have that understanding before the session begins; and, have the parties place an additional statement on the agreement that they sign and date committing to keeping their communications confidential.

For additional information, clarification and learning, please go to the Learning Management System and complete the web/computer based course titled, “Confidentiality in Mediation.”

EEOC Rules on Validity of a Mediated VA Settlement Agreement

By Tina Dean

In the decision *Wuetcher v. Dept of Veterans Affairs*, EEOC Appeal No. 010101198 (May 28, 2010), a Settlement Agreement reached in mediation was found to be invalid because it was not signed by the facility director. Language contained in the Settlement Agreement template that was used stated that “after legal review by Regional Counsel and signature of the medical center director” the agreement would be effective. The Settlement Agreement was never signed by the facility director, who ultimately disapproved the agreement and thus, there was no final agreement. Settlement Agreements in general are normally signed by an authorized representative of the Agency which in the VA is normally the facility director. This decision reminds VA mediators to ensure that the Settlement Agreement template used in mediation contains the appropriate signature blocks and language specifying when the agreement is considered effective.

ORM has three templates available:

Settlement Agreement for EEO

Settlement Agreement for EEO with Age

Settlement Agreement for non EEO cases

Mediators also need to be prepared to discuss the process of finalizing a mediated Settlement Agreement with the parties. The requirement for Regional Counsel Review may require additional time. Discussion with the ADR Coordinator about these arrangements is critical so everyone knows what steps need to occur if agreement is reached in mediation.



MEDIATOR SPOTLIGHT

Congratulations to Karen Civitate, the first VA employee to become certified in all four ADR specializations available from the Workplace ADR Program: Mediation, Individual Facilitation, Group Facilitation, and ADR Mentoring! Karen has taught and mentored hundreds of VA employees, as well as, employees from other Federal agencies. Karen has successfully conducted over 200 mediations and group facilitations in VISN 22, several VA facilities around the country, and other Federal agencies. She has also played a role in designing, developing and delivering ADR policies and programs for VA facilities.

Please view the ADR Calendar page to see upcoming trainings. If you would like to host a training at your facility, please email us at workplaceadr@va.gov.

If you want to recommend someone for the mediator spotlight, send a short summary to workplaceadr@va.gov

10 Reasons We Get Stuck In Conflict

Submission by Judy Tobe

The following was taken from a workshop conducted by a well-known mediator, Ken Cloke, (www.kennethcloke.com).

There are undoubtedly thousands of reasons we get stuck in a conflict and are unable to move forward. Here are 10 to which, I'm sure, you can add your own:

1. Conflict defines us and gives our lives meaning. Having an enemy is a quick, easy source of identity, because we are whatever they are not.
2. Conflict gives us energy even if it is only the energy of anger, fear, pain, jealousy, guilt, grief and shame.
3. Conflict ennobles our misery and makes it appear that we have suffered for a worthwhile cause.
4. Conflict safeguards our personal space and encourages others to recognize our needs and respect our privacy.
5. Conflict creates intimacy, even if it is only the transient, negative intimacy of fear, rage, attachment and loss.
6. Conflict camouflages our weaknesses and diverts attention from sensitive subjects we would rather avoid discussing.
7. Conflict powerfully communicates what we honestly feel, allowing us to vent and unload our emotions onto others.
8. Conflict gets results. It forces others to heed us, especially those who only seem to respond to our requests when we yell at them.
9. Conflict makes us feel righteous by encouraging us to believe we are opposing evil behaviors and rewarding those that are good.
10. Conflict prompts change.

Thus, while there are many excellent reasons for engaging in conflicts, there are even better ones for resolving them and collaborating with our opponents in informal problem solving, unrestricted dialogue and interest based negotiations. Conflict is, therefore, simply cracks in a system. It is an opportunity for rethinking, innovation and the beginning of a new way of being or behaving.

Ask the Mediator

Question:

During mediation, may the responsible management official (RMO) and the management official who has settlement authority, be the same person?

Answer: No. The RMO is the agency official directly involved in the case who is accused of committing the discriminatory act, therefore, the RMO may not serve as the person with settlement authority. An official with settlement authority should be present at the settlement or ADR negotiations, if not, such official must be immediately accessible during settlement discussions or ADR.

Here is the guidance from the EEOC's Management Directive (MD-110), the link is also included:

Chapter 3 – ALTERNATIVE DISPUTE RESOLUTION

VI OPERATION OF ADR PROGRAMS - Written Procedures

The agency must establish written procedures detailing the operation of its ADR program. The written procedures should include, at a minimum, the following information:

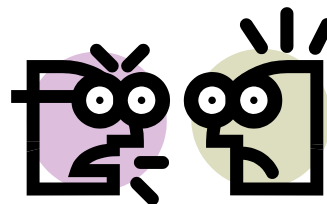
An assurance that the agency will make accessible an individual with settlement authority and that no responsible management official or agency official directly involved in the case will serve as the person with settlement authority.

<http://www.eeoc.gov/federal/directives/md110.cfm>

Quarterly Quote:

~Most people do not listen with the intent to understand; they listen with the intent to reply.

Stephen Covey



ADR on TV

Last quarter, the new legal drama, *Fairly Legal*, was introduced. In addition to this program, another show hit the nation called *Harry's Law*. Here is what individuals had to say about both shows:

***"Fairly Legal*, a new show on USA Network about a lawyer turned mediator who was greeted with both excitement and concern from this mediator. This is the first TV show where the main character is a mediator. But this mediator and this style of mediation, is not the way many mediators practice. Kate identifies and suggests solutions to the parties and makes statements that her role is to help solve their problem. Sometimes her settlement tactics can make a mediator cringe, as in the case of the high school football player whose father provided him steroids. The result certainly seems for the best, but is that really mediating? I like this show because it is funny, well acted and has great scenery of San Francisco. What I**



don't like is that as a mediator I think it may make my job harder, because people will think that my role is to solve their problems for them and give them the answers, instead of making them determine what the best solution is for themselves."

Mediator in St. Louis, MO

"I didn't know what to expect during the first episode of the TV show. The first episode brought out a little bit of what mediation is. The mediation process was interesting even though it was not the process we follow within the VA. I really enjoyed the enthusiasm and the intensity of Kate Reed. However, I don't agree with her attachment or involvement in

each case, as I saw in each episode. Mediators should be impartial all the time. It is a good show, but I don't believe the show presents the mediator exactly how it should work as a neutral third party."
ADR Coordinator in Washington, DC

***Harry's Law*-another new legal drama on NBC included a segment on gang mediation in a recent episode. In this case, two separate gangs came to mediation over the burning of one member's car by a member of the other gang for dating his former girlfriend. The episode included being comfortable with conflict, when gang members drew guns and so did one of the mediators (Harry). It also showed the voluntariness of the process, when the gang members decided they no longer wanted the attorney as their mediator but the law office employee from the neighborhood instead. The use of the term mediation in this episode should probably have been exchanged with arbitration since the mediator's role was to hear from each side and to render a decision that the parties agreed to follow. Mediator in St. Louis, MO**

ADR EVENTS WHERE YOU ARE!

VBA Lunch Hour ADR Meet & Greet in the Bay Pines Canteen Building

Wednesday, February 23, from 11:00 - 1:30 .



ADR Specialist Christa Metzger from VISN 8 and ADR Coordinator, Bettie Bookhart from St. Petersburg RO, hosted a Meet and Greet during the lunch period to bring ADR Awareness information to VA employees. A DVD copy of "Three Little Pigs" played on the lunchroom monitor during the event. "I thought it was a great event. Bettie and I were able to talk to quite a few people about ADR at the VBA. We were there from 11:30 am to 1:00 pm, so we caught almost everyone who had lunch in the canteen that day. Bettie arranged for a VBA wide announcement to go to everyone's e-mail, so they knew why we were there. I thoroughly enjoyed meeting the folks at the VBA one-on-one. We mediate there, but it is hard to chat informally while doing a mediation." - Christa Metzger

Share your ADR events. Send articles and pictures to Nicole.Davis3@va.gov, ADR Newsletter Editor

Upcoming Trainings

ADR Awareness Training, VAMC Las Vegas, NV
(**Apr 25-29**) Karen Civitate, Training Coordinator

Basic Mediation Skills Training VAMC Houston, TX
(**May 9-13**) POC-Kim Milstead

ADR Awareness Training VAMC Detroit, MI
(**Jun 1-3**) POC- Charles Lawrence

Advanced Mediation Skills Training VAMC Kansas City, MO
(**Jun 28-30**) POC- Tina Dean



John H. Jones, ADR Specialist/Trainer, John.Jones1@va.gov, (910) 482-5083 or (910) 273-5338
Karen Civitate, ADR Specialist/Trainer, Karen.Civitate@va.gov, (310) 268-3586 or (310) 629-4727

2011 Trainings

VISN 2 ADVANCED MEDIATORS



March 2-4
Advanced Mediation Training in Albany, NY

February 2-7
Conflict Coaching Training in Albuquerque, NM



Workplace ADR Staff can provide your facility with mediation and facilitation skills trainings and departmental conflict assessments. Please contact us at 202-461-0234, or email us at Workplaceadr@va.gov to get more information!

WORKPLACE ADR

Things associated with Alternative Dispute Resolution.

E	T	T	F	O	A	U	T	H	O	R	I	T	Y	H	R	R	T	Y	I
P	C	O	U	N	S	E	L	O	R	N	O	I	T	U	L	O	S	E	R
R	O	O	N	E	A	E	N	P	F	M	T	N	U	M	S	T	I	N	E
C	E	N	M	U	N	E	E	O	N	E	N	S	G	A	O	A	Y	R	Y
E	N	N	C	P	T	O	R	Y	C	I	E	T	E	N	N	I	M	O	O
N	E	P	O	E	L	M	T	H	T	T	M	N	N	R	A	D	O	T	T
T	A	T	N	I	A	A	N	O	T	O	E	A	E	E	N	E	F	T	U
O	Y	M	F	T	T	I	I	L	U	D	E	P	R	S	U	M	O	A	I
N	Y	T	I	T	Q	A	E	N	C	E	R	I	A	O	N	T	O	N	T
T	O	O	D	U	Y	M	I	D	A	E	G	C	L	U	T	D	R	R	N
T	N	A	E	A	E	O	I	D	S	N	A	I	C	R	C	A	M	A	A
G	T	S	N	N	N	U	N	E	E	G	T	T	O	C	I	M	E	N	L
N	N	E	T	E	E	R	N	I	M	M	T	R	U	E	L	E	A	M	N
U	C	N	I	N	E	T	Y	D	A	Y	S	A	N	S	N	E	I	E	R
N	Q	M	A	H	A	T	T	T	N	A	T	P	S	C	M	M	Y	S	O
N	T	R	L	T	I	M	A	N	A	G	E	M	E	N	T	I	O	I	O
E	L	A	I	C	I	F	F	O	G	N	I	V	L	O	S	E	R	O	U
R	S	V	T	N	A	N	Y	R	E	K	C	A	R	T	R	D	A	O	P
I	E	F	Y	T	I	N	U	T	R	O	P	P	O	N	M	S	I	I	M
E	R	S	E	E	A	L	N	N	U	A	S	Y	F	I	L	H	P	E	G

Resolving Official
Management
Complainant
Representative
Attorney
Mediator
Neutral
Ninety days

Case Manager
General Counsel
ADR Tracker
Agreement
Settlement
Resolution
Confidentiality
Counselor

Mediation
Union
Authority
Information
Opportunity
Techniques
Human Resources
Participants



Workplace ADR Program

Department of Veterans Affairs

810 Vermont Avenue, NW (08)
Washington, DC 20420

Phone: 202-461-0234

Fax: 202-461-4145

E-mail: WorkplaceADR@va.gov

Mediation: A Solution to Workplace Disputes

The Workplace ADR Program solicits articles for VA's quarterly ADR newsletter. The purposes of the newsletter are to communicate information relating to the use of ADR in workplace disputes, and to serve as a resource for those interested in learning more about ADR and its application within VA. We invite you to submit ideas and articles for the newsletter through your respective administrations: VHA to Sherron McHellen (10A2E), VBA to Johnny Logan (20M42), NCA to Nicole Maldon (40A), VACO staff offices to your VACO ADR Liaison, and labor organizations to your ADR Council Representative. We are looking for ideas and articles on ADR-related topics, noteworthy activities, initiatives, accomplishments, best practices, or other items designed to educate and inform VA employees and managers on ADR and its benefits in addressing workplace disputes. We hope the ADR community will find the newsletters a useful resource for obtaining interesting and helpful information representing ADR activity throughout VA. For more information, visit our website.

New Phone Numbers in Washington, DC: The phone numbers in the DC Offices are changing. Effective April 7 all phone numbers with the 501 or 273 extension will be changed to 461. Old numbers will continue to work for the remainder of the fiscal year. We will be changing all publications/materials/brochures that have the old numbers listed. Look for new phone numbers in the next edition



ADVANCE is an exciting new direction for the Department, for Veteran's services and for your career. ADVANCE is an unprecedented, long-term investment in the professional and personal growth of each and every VA employee nationwide. It will provide you and other VA employees, the tools, training and support necessary to advance your career and improve services to Veterans and their families.

ADVANCE Your Knowledge and Skill in
Managing Conflict and Resolving Disputes through Mediation
by taking classes at the Justice Center of Atlanta
sponsored by the Office of Resolution Management,
Workplace ADR Office.

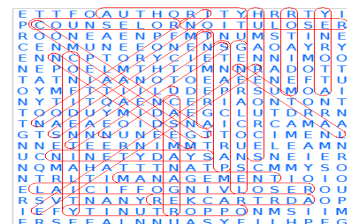
Targeted Audience: Senior Executives, GS-14-15s and Title-38 Equivalents who are in Supervisory Positions
<http://vaww.va.gov/ADVANCE/index.html> <http://vaww.va.gov/ADVANCE/docs/justicecenter.pdf>

Peaceful Conflict Resolution

- Respect the right to disagree
- Express your concerns
- Share common goals and interests
- Open yourself to different points of view
- Listen carefully to all proposals
- Understand the major issues involved
- Think about possible consequences
- Imagine several possible alternative solutions
- Offer some reasonable compromise
- Negotiate mutually fair cooperative agreements

WORKPLACE ADR

Things associated with Alternative Dispute Resolution.



Resolving Official	Case Manager	Mediation
Management	General Counsel	Union
Complainant	ADR Tracker	Authority
Representative	Agreement	Information
Attorney	Settlement	Opportunity
Mediator	Resolution	Techniques
Neutral	Confidentiality	Human Resources
Ninety days	Counselor	Participants